IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 25 OF 2007

Ms. Teresa D'Souza
H. No.1/1 Sauntawado
Assagao. ... Applicant

versus

1. Norman Albuquerque
   H. No.215A-846
   Porvorim-Bardez Goa.

2. State through the
   Public Prosecutor,
   Panaji-Goa. ... Respondents

Ms. Asha Dessai, Advocate for the Applicant.

Mr. S. G. Dessai, Advocate for the Respondent No.1.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 6TH JULY, 2007.

ORAL ORDER

Heard the learned Counsel on behalf of both the parties.

2. This revision petition is directed against the Order dated 2-2-2007 of the learned Additional Sessions Judge, Panaji.

3. Some facts are required to be stated to dispose of this revision.

4. The applicant is the spinster aunt-in-law of the respondent no.1/accused(accused, for short) and upon a complaint filed by her, a case was registered against the accused, under Sections 354, 504, 323 and 427 I.P.C. At the relevant time, the accused and his wife were residing in the latter's paternal house, where the first informant was also residing. The incident took place on 13-5-2005.

5. The learned J.M.F.C., Mapusa, by Order dated 21-8-2006 convicted the accused under Sections 354, 504, 323 and 427 I.P.C. and sentenced the accused to undergo one month S.I. and to pay a fine of Rs. 1000/-, on each count, and in default to undergo seven days S.I. on each count.

6. The accused filed an appeal against the said conviction/sentence and the learned Assistant Sessions Judge who heard the appeal, allowed the appeal partly but acquitted the accused under Section 323 I.P.C.

7. The accused filed another revision application and this time the same was dealt with by the learned Additional Sessions Judge, Panaji who reduced the conviction from Section 454 I.P.C. to Section 509 I.P.C., maintaining Section 504 I.P.C. and further reducing the conviction from Section 427 to Section 426 I.P.C. The learned Additional Sessions Judge

considered the provisions of Section 361 of the Code of Criminal Procedure, 1973 and observed that the Courts below had not recorded any reasons for not having dealt with the accused under the provisions of the Probation of Offenders Act, 1958, as required. The learned Additional Sessions Judge also referred to the decision of the Apex Court in the case of **Vishnu Deo** v. **State of West Bengal**(AIR 1979 SC 964) and relying on the same thought fit that the case was good enough to extend the benefit of Section 3 of the Probation of Offenders Act, 1958, to the accused and accordingly extended the same, after modifying the conviction, as stated herein above and confirmed the acquittal under Section 323 of I.P.C.

8. Admittedly, the case filed against the accused was investigated upon a complaint filed by the applicant/first informant. In other words, it was a case filed by the State and the State has chosen not to file an appeal either against the conviction or sentence imposed upon the accused by Order dated 2-2-2007.

9. At the hearing of this revision petition, Ms. Asha Dessai, the learned Counsel on behalf of the applicant submits that all the ingredients of Section 354 were present and therefore the learned Additional Sessions Judge ought not to have reduced the conviction from Section 354 to Section 509 I.P.C. As far as Section 427 I.P.C. is concerned, the learned Counsel concedes, and in my view rightly, that there was no evidence to bring the case under the purview of Section 427 I.P.C. The learned Counsel on behalf of the applicant further submits that the accused had forced the door open

and thereafter attempted to catch the hands of the applicant and in such a situation the conviction under Section 354 was proper. As regards sentence, the learned Counsel on behalf of the accused submits that considering the gravity of the offence where the accused had entered the room of the applicant and had outraged her modesty the sentence imposed by the learned J.M.F.C. by Order dated 21-8-2006 was proper. The learned Counsel in support of the submission has relied upon the decision of the Apex Court in the case of **Rupan Deol Bajaj** v. **K. P. S. Gill**(AIR 1996 SC 309) wherein the Apex Court stated thus:-

> "It is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being states of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case. Since, however, in the instant case we are only at the incipient stage we have to ascertain, only prima facie, whether Mr. Gill by slapping Mrs. Bajaj on her posterior, in the background detailed by her in the FIR, intended to outrage or knew it to be likely that he would thereby outrage her modesty, which is one of the essential ingredients of Section 354 IPC. The sequence of events which we have detailed earlier indicates that the slapping was the finale to the earlier overtures of Mr. Gill, which considered together, persuade us to hold that he had the requisite culpable intention. Even if we had presumed he had no such intention he must be attributed with such knowledge, as the alleged act

> was committed by him in the presence of a gathering comprising the elite of the society – as the names and designations of the people given in the FIR indicate. While on this point we may also mention that there is nothing in the FIR to indicate, even remotely, that the indecent act was committed by Mr. Gill, accidentally or by mistake or it was a slip. For the reasons aforesaid, it must also be said that, - apart from the offence under Section 354, IPC – an offence under Section 509, IPC has been made out on the allegations contained in the FIR as the words used and gestures made by Mr. Gill were intended to insult the modesty of Mrs. Bajaj".

10. On the other hand, Mr. S. G. Bhobe, the learned Counsel on behalf of the accused submits that the State has chosen not to assail the Judgment of the learned Additional Sessions Judge either in terms of conviction or for enhancing the sentence and the present petition is nothing but an attempt on the part of the applicant to keep the wounds in the family festered and that is because of the strained relationship between the accused and his wife, the first informant being the sister of the father-in-law of the accused.

11. The learned Counsel has also placed reliance on the case of **Ram Sanjiwan Singh** v. **State of Bihar**(AIR 1996 SC 3265) wherein the Apex Court has stated that it is settled law that imposition of sentence is in the realm of discretion of the Court and unless this sentence is found to be grossly inadequate, the appellate Courts will not be justified in interfering with

the discretionary order of sentence.

12. Admittedly and as already stated, this is a revision filed by the first informant and this Court's interference would be called for only in the case where there exists a manifest illegality or great miscarriage of justice. Admittedly, the accused has been acquitted under Section 323 I.P.C. and that part of the order has not been appealed. Section 354 I.P.C. deals with assault or criminal force to women with intent to outrage her modesty. It states that whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Section 350 I.P.C. defines criminal force to mean that whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other. The accused might have kicked or forced the door open but that would not amount to using the force to the person of the first informant. The first informant's allegation that the accused tried to catch her hand and assaulted her with fist blow on her face has not been accepted by the first appellate Court and for that reason the accused has been acquitted. The first appellate Court as well as the first revisional Court appear to have accepted her allegation to the limited extent that the accused had abused her saying 'bitch, coming to fuck' and then pulled down his pant and exposed his private part to

her. That per se would not bring the offence under Section 354 I.P.C. but as rightly held by the learned Additional Sessions Judge her case squarely fell under Section 509 I.P.C. In my view, the finding on that score of the learned Additional Sessions Judge could not be faulted.

13. As far as the sentence is concerned, the learned Additional Sessions Judge after considering the provisions of Section 361 of the Code and the Judgment of the Apex Court in the case of **Vishnu Deo** v. **State of West Bengal**(supra) has thought it fit to extend the benefit of the provision of Section 3 of the Probation of Offenders Act, 1958. It appears from the record that the accused was enraged by the first informant by closing the door and acted in the manner he did on that count. The incident took place in the very house where both of them were residing at the particular time and considering the facts of the case and the provisions of law as discussed by the learned Additional Sessions Judge in paras 32 and 35, the extension of benefit of Section 3 of the Probation of Offenders Act, 1958 could not be faulted. The learned Additional Sessions Judge certainly ought to have compensated the first informant by taking recourse to the provision of Section 5 of the Probation of Offenders Act, 1958 so that the accused does not repeat his behaviour again in the manner he did. This could be done by maintaining the fine imposed by the learned J.M.F.C. of Rs.1000/- on each count but as compensation under Section 5(1)(a) of the Probation of Offenders Act, 1958. To that extent, the Judgment/Order of the learned Additional Sessions Judge dated 2-2-2007 would stand modified. The accused is directed to deposit the said compensation before the trial Court within a period of thirty days from

today and in default to undergo S.I. for three months. In case it is deposited, the same shall be paid to the applicant/first informant.

N. A. BRITTO, J.

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